IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 679 OF 2006

Shaikh Mohd. Yusuf Mohd.Yakub .... Petitioner

versus

Brihanmumbai Municipal
Corporation & ors. ... Respondents.

Shri Y.S.Jahagirdar Sr. counsel with Mrs. Varsha Palav
for the petitioner.
Shri R.V.More for Respondent no.2.
Shri R.D.Rane AGP for Respondent no.3.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 5TH APRIL, 2006.

JUDMGNENT (Per Palshikar, J.):

1. By this petition, the petitioner has challenged the order passed by the Caste Scrutiny Committee and consequent removal of the petitioner on incurring disqualification as contemplated by BMC Act.

2. The petitioner contested the elections of Mumbai Municipal Corporation in February 2002 from ward no.8 which was specifically reserved for a backward class candidate. The petitioner filed nomination for that and submitted the caste certificate. On the basis of it, his nomnination was accepted and ultimately he was

elected from ward no.8 of the BMC in the year 2002.

3. Thereafter his caste certificate was forwarded to the Caste Scrutiny Committee for verification. The Committee after giving adequate opportunity to the petitioner to prove that he belongs to the caste which he claimed by the certificate and on appreciation of the material evidence on record, came to the conclusion that the certificate was invalid, it having been obtained by illegal means. This finding and order of the Caste Scrutiny Committee resulted in the petitioner incurring disqualification as contemplated by section 16(1C) of the Act. As a consequence he was held as disqualified and removed from the membership. The petitioner has therefore challenged both, the removal and the validity or correctness of the order passed by the Caste Scrutiny Committee on 10th June 2005 by which the caste certificate of the petitioner was invalidated. Both these orders are impugned in this petition.

4. The learned counsel appearing on behalf of the petitioner submitted that the incurring of disqualification under section 16(1C) is automatic and therefore the contention in effect is that the disqualification under section 16(1C) being automatic, the order of the Caste Scrutiny Committee must give a

clear cut finding that the claim of a person to belong to a particular category was false or was made on a false declaration. Such finding, according to the learned counsel, is not recorded and hence the impugned actions are liable to be set aside.

5. With the assistance of the learned counsel for the petitioner, we have scrutinised the provisions of section 16(1C). For proper understanding of the submission it is better that the section itself is quoted.

> 16 (1C) Notwithstanding anything contained in sub-section (IB), a Councillor who has been elected to a reserved seat as mentioned in sub-section (IB), shall be disqualified for being such councillor consequent upon the Caste Certificate Verification Committee or any other Competent Authority specified by the State Government for the purpose of scrutiny of the Caste Certificate, declaring the Caste Certificate of such Councilor to be invalid and cancelling the same, on the ground of the same having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category, and thereupon the

Councillor shall be deemed to have vacated his office on and from the date of declaration of such certificate to be invalid and cancellation of the same by the said committee or the Competent Authority."

6. It will be seen from the above that for attracting automatic disqualification as contended in the section, it is necessary that the certificate of such person is held invalid and cancelled on the ground of the said certificate having been based on a false claim or declaration made by such person claiming to be belonging to a particular category. This being obviously a penal provision, according to the learned counsel, is required to be interpreted strictly. So interpreted the order of Caste Scrutiny Committee must have a clear finding to this effect namely to the effect that the certificate was based on a false claim and declaration. According to the learned counsel there being no such clear cut finding and therefore liable to be struck down as a consequence of which action taken under section 16(IC) is also liable to be struck down.

7. We have scrutinised the impugned order carefully. We have noticed from the impugned order that the conduct of the petitioner before the Committee was

obvious and he wanted the certificate to be verified and therefore he had made false claims right from the obtaining of the certificate to the invalidation thereof. The Committee has noted in its order that the petitioner was an ordinary resident of Bombay. But he got certificate of caste from Sub Divisional Officer, Satara. The circular dated 3rd June 1996 mentions that generally a certificate of such kind is to be obtained from the Sub Divisional Officer of the District where the applicant is originally resides. The tribunal then noted that reference to an affidavit made by the petitioner in Bombay Small Cause Court (Petition No. 8149/2004) where he has stated a note that he was ordinary resident of Bombay since 1942. According to the Committee therefore the false claim begins from obtaining a certificaqte from Satara when he is ordinary resident of Bombay. Then Committee noticed that inspite of several opportunities granted the petitioner was unable to state before the Committee the place where he was staying in Satara district. Then the Committee has observed that thereafter the petitioner have an extrant of 7/12 in relation to a land in Satara to lead the Sub Divisional Officer to a conclusion that he belongs to Satara. It is then observed that by misleading the authority the Certificate was obtained. It is specifically observed that the petitioner has while obtaining the certificate

successfully cheated the Sub Divisional Officer and for making such false report, action has been taken against the concerned people.

8. Then the tribunal proceeds to observe in its order that it has before it the evidence to show that the petitioner was resident of Bombay since 1942, and he has not given any evidence to show as to how he was resident of some village in Satara district. It therefore observed that inspite of granting several opportunities to petitioner, he failed to prove that he belongs to Satara district and then recorded a categorical finding that in order to save falsely obtained certificate, several adjournments were sought by the petitioner. From these observations it is obvious that the petitioner did make a false claim, before the Sub Divisional Officer Satara, (1) that he is originally resident of Satara, (2) that he belongs to a particular caste, which is included in other backward classes. He obtained false reports from Talathi and others to substantiate his claim. He deliberately avoided leading the evidence before the Committee and has cheated the Sub Divisional Officer and made him to grant the certificate. In the face of such facts, it cannot be said that the claim of the petitioner was not held to be a false claim as contemplated by Section 16(IC) quoted above. In our

opinion, therefore no interference is called for in so far as the disqualification is concerned.

9. Our scrutiny as will be seen from the discussion above, the impugned order passed by the Committee shows that it is based on appreciation of cogent evidence available before the Committee. They are properly marshalled the facts and properly appreciated the evidence and has come to a legal conclusion. Therefore there is no reason to interfere with the order passed by the Caste Scrutiny committee on 10th June 2005.

10. In the result, therefore, the petition fails and it is dismissed.

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